

Commissioner Rob Rogers
NSW Rural Fire Service
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13 June 2023

Dear Commissioner Rogers

RE: Planning Proposal PP 2022 – 658 Lourdes Retirement Village, 95-97 Stanhope Road Killara

We are writing out of deep public concern that the RFS has advised the Department of Planning that it has no objection to the above planning proposal despite Ku-ring-gai Council advice that it would be negligent to approve it due to grave bushfire risks.

We copied you with our submission to the Planning Proposal dated 26 September 2022 (attached), which outlined our concerns regarding the bushfire risks associated with the proposal and the risk to life and property.

We in Ku-ring-gai will never forget the devastating fires that occurred in West Lindfield in January 1994 - a fire which caught people completely unaware with residents being unable to get out of their streets. <https://www.dailytelegraph.com.au/newslocal/north-shore/volunteer-firey-remembers-1994-fires-as-he-prepares-to-retire/news-story/1304c52b9da22427ff62e6ed50de3565>. I have personally endured the terror of preparing to evacuate my home in Koola Avenue East Killara in the early 70's as a schoolgirl with the oncoming threat of bushfire. East Killara as you would be aware is a mapped high bushfire prone area.

The planning proposal seeks to change development controls in the Ku-ring-gai LEP. If approved, this would allow a doubling of the current population on a site that is on top of a ridge, is surrounded by bushfire prone land and has a single exit road (a narrow cul de sac).

The proposal does not comply with measures mandated for “special fire protection purpose” (SFPP) developments such as retirement villages. It fails to incorporate the 100m asset protection zone that should be included in such a development (per clause 6(b) of Ministerial Direction 4.3). In fact, there is no defensible space at all meaning firefighters could not undertake active property protection without being in the flame zone. Instead, the proposal relies on a “performance-based approach” and the evacuation of a large number of elderly residents to an onsite refuge. As you well know, not all fires can be predicted

(e.g. electrical fault, arson, lightning) and reliance on evacuation cannot be a sufficient substitute for the measures required for SFPP developments.

As with the major Bushfires such as occurred in 1994 and 2001/2002, the emergency services may be fully stretched to operational capacity and fire and emergency management may not always be possible in a timely manner and possibly not at all. It is highly probable that the first casualty in a wildfire will be electricity, making the use of lifts and clear lighting normally available for the physically immobile and incapacitated, impossible. The risk associated with high rise buildings for occupants' egress are magnified in SFPP developments where decreased visibility, choking smoke, increased stress levels and lack of mobility could seriously affect the elderly located on the higher floors of the buildings.

Ku-ring-gai Council's 241 page submission in response to the proposal includes three expert analyses that are site specific and were undertaken in 2022. They demonstrate that the fire risks relating to the site are high, the evacuation strategy is highly problematic and that the proposed approach will **not** protect residents. **Council states that it would be negligent to approve the proposal.**

Despite this, an RFS officer (Mark Sugden, Acting Manager of Development Planning and Policy) advised the Department of Planning in February 2023 that the RFS has no objection to the proposal, based on additional analysis by the proponent's fire consultant, Blackash. No reference is made to the analysis done by Ku-ring-gai Council.

The Blackash analysis was completed in December 2022 (well after the close of the public exhibition period) but only published on 6 June 2023. It cites outdated Council analysis from 2012 and 2015 – analysis which is currently being updated by Council, and which is contradicted by the expert studies in Council's submission see:

<https://www.planningportal.nsw.gov.au/ppr/post-exhibition/95-97-stanhope-road-killara-lourdes-retirement-village>. Had the RFS taken Council's analysis into account as it should have done, we submit that support for the proposal could not reasonably have been given.

The RFS advice authored by Mr Sugden does not comply with Ministerial Direction 4.3 and cannot legally be relied on by the Sydney North Planning Panel. Under clause 7 of Ministerial Direction 4.3, *you as Commissioner* are required to provide written advice that you do not object to a planning proposal even though it fails to comply with the Direction. (This reflects the gravity of the situation where a developer seeks to ignore fire safety requirements designed to protect vulnerable residents.) The advice from Mr Sugden does not meet these requirements since it is not signed by you, nor does it mention the non-compliance with the Ministerial Direction.

We understand that a decision by the Sydney North Planning Panel will be made in the very near future and we call on you not to approve this proposal. The proposed redevelopment will not increase seniors living and locates new medium density residential development too far from urban centres to be consistent with government policy. If approved, the lives of Lourdes residents and emergency personnel will be put at risk for no reason other than to maximise developer profits. We note the proponent could develop the site now under existing controls and take advantage of height and floor space ratio bonuses in the Housing SEPP. In other words, there is no need to approve this planning proposal in order to allow the site to be redeveloped.

Ku-ring-gai Council has made clear that it does not wish to be held accountable for any loss of life that occurs as a result of this proposal, or the precedent that it sets for other

sites. Such a precedent will undermine the efforts of Ku-ring-gai Council and the NSW Government to prevent climate fuelled disasters from occurring. We call on you not to approve this proposal unless you are willing to accept responsibility for lives lost as a result of it. Please reject this proposal as a matter of urgency.

We also seek answers to the questions outlined in the attached (below) and look forward to your reply.

Yours faithfully

Kathy Cowley

Kathy Cowley
PRESIDENT

cc The Hon Jihad Dib Minister for Emergency Services

cc. Matt Cross MP Member for Davidson

cc The Hon Paul Fletcher MP Member for Bradfield

cc Mayor and Councillors Ku-ring-gai Council

cc David Barwell DailyTelegraph

Further information and questions for Commissioner

The planning proposal seeks to change the development controls in the Ku-ring-gai LEP, changing the zoning to R3 and increasing the permitted building height by 130% (from 9.5 up to 22m) and floor space ratio by 150% (from 0.3:1 to 0.75:1). If approved, this would allow a doubling of the current population on a site that is surrounded by bushfire prone land and has a single exit road (a narrow cul de sac).

In November 2022, the RFS stated: “Before R3 Medium Density Residential can be fully commented on, further analysis would need to be undertaken to determine the maximum number of occupants that could be on-site.” This is a central and critical question, analysis of which must inform the decision as to whether it is appropriate to allow such significant intensification of use. It should have been addressed prior to public exhibition so that the analysis could be scrutinised by stakeholders – including residents, FOKE, Ku-ring-gai Council and other agencies.

In response to the RFS’ November 2022 comment, the proponent’s consultant, Blackash, provided a further addendum dated December 2022. The addendum (which is 345 pages, more than 320 of which are attachments) relies on old council analysis (completed a decade ago and currently being updated by Council) to conclude that the site can safely accommodate the increased population. On the basis of that analysis, Mr Mark Sugden stated on 8 February 2023 that the RFS has no objection to the planning proposal. The Blackash addendum and fundamentally revised RFS position were only published on the Planning Portal on 6 June 2023.

The Blackash addendum is in stark contrast to the submission by Ku-ring-gai Council. Council’s submission includes in depth, up to date and site-specific investigation by three expert consultants. That analysis demonstrated that s9.1 of the EP&A Act has **not** been met (this requires public authorities to comply with Ministerial Directions such as Ministerial Direction 4.3 Planning for Bushfire Protection). Council states **it would be negligent to approve the planning proposal**. Council’s submission warrants your close attention. It is

available at <https://www.planningportal.nsw.gov.au/ppr/post-exhibition/95-97-stanhope-road-killara-lourdes-retirement-village>.

By contrast, there are multiple concerning issues with the Blackash addendum which:

- relies on old analysis (currently being updated by Council) that does not take into account the experience of the Black Summer Fires and other recent fire seasons.
 - o Comment: Climate and fire records have been continually broken since the analysis relied on by Blackash was completed.
- repeatedly alleges that the RFS approved the proposal and compliance strategy back in November 2022.
 - o Comment: this is demonstrably wrong. See above quote showing that, in November 2022, the RFS was unable to make a decision on the proposal due to inadequate analysis of population issues.
- ignores changing climatic conditions and current projections of the impact of climate change on fire behaviour, frequency and intensity. For example it says on page 10: "Notably, the subject land and Retirement Village is in a locality that has not had widespread wildfire (nothing within 2km of the site) and is *never likely to experience this* as the vegetation is confined to relatively narrow pathways in directions that are not exposed to widespread and major bushfires (i.e. a bushfire attack from the northeast to southeast)." (emphasis added)
 - o Comment: This is directly contradicted by CR Bushfire's peer review of the planning proposal which is included in Council's submission. That review notes at p29 that "the risk from the southerly bushfire aspect has been significantly underplayed" by the proponent and states: "a fire originating in the north/north-east which is then subject to a southerly wind change would redirect a potentially intense bushfire attack towards the subject site from a south/south-easterly direction. This is a common feature of NSW weather conditions and has occurred within multiple destructive fire events including Black Saturday (Victoria 2009), Tathra (NSW 2018) and multiple locations during Black Summer (NSW 2019/2020)."
- assumes that significant emergency personnel will be available to respond in the event of fire.
 - o Comment: Again, this ignores recent experience showing that such resources can be stretched beyond capacity.
- makes unreasonable assumptions about the speed with which residents could evacuate or move to the onsite refuge, and fails to address the many concerns raised by Council re evacuation feasibility.
 - o Comment: Council analysis highlights the many issues with evacuating frail elderly (many with limited mobility, hearing, cognition etc), particularly in the event of a power outage and from high rise buildings (defined as greater than 3 stories).
 - o The Blackash report implicitly assumes that residents of the proposed townhouses will be able to evacuate quickly. However, as Council notes, there is no way to ensure that residents of the proposed townhouses (located within the flame zone) will move out when they become "seniors", nor to prevent residents from moving into the townhouses if they have limited mobility etc.
- Blackash suggests at p20 that, if a fire were to impact within an hour, it "would be relatively small due to the limited runs and time to impact and not burning under catastrophic fire weather conditions".
 - o Comment: This statement is not supported by any evidence and is contradicted by the Council submission. Council's Bush Fire Strategic Study, completed for the site in 2022, states at p7 that "that there is high potential for

- both long and short fire runs to impact the Lourdes site which would largely be driven by north/north-westerly or north-easterly winds and a potential southerly wind change”.
- It is entirely possible that an electrical fault, arson or lightning strike could occur during catastrophic fire conditions, posing real and immediate risks to residents. (An electrical fault and fire occurred at night late last year on the eastern perimeter of Lourdes. Luckily the fire did not spread due to lack of wind. Had it spread, there would have been no time to control the fire before residents were impacted, and no time to evacuate residents. Failure to include a defensible space in the proposed redevelopment will mean that residents are not protected if such an instance were to recur.)
 - Blackash makes multiple references to further discussions with the RFS but no evidence of these discussions is provided.
 - Comment: By contrast, the original planning proposal published RFS correspondence at Appendix M. Such dealings must be made available on the planning portal immediately as the current situation raises grave questions about the impartiality of the RFS, particularly given the close relationship between the RFS and Blackash staff (several of whom are former RFS staff).

As Commissioner we ask these questions of the RFS in the public interest:

1. What, if any, analysis did the RFS undertake before providing its February 2023 advice based on the Blackash addendum?
2. What, if any, consideration has the RFS given to Council’s recent and site-specific analysis?
3. Why has decade old analysis been relied on in preference to the concerns raised in Council’s up to date and site-specific analysis?
4. Will you arrange for dealings between RFS and Blackash to be published on the planning portal as a matter of urgency?
5. What measures have been put in place to ensure that dealings between Blackash and the RFS are appropriately impartial given Blackash staff are ex-RFS?
6. Consistent with the requirement on the Commissioner to approve the proposal under clause 7 of Ministerial Direction 4.3, will the Commissioner accept responsibility for any loss of life and property resulting from this proposal (and the dangerous precedent that any such approval would create) in a future coronial inquest?
7. If not, why is the Commissioner prepared to put lives at risk by allowing this proposal to proceed when it should be refused on bushfire risk grounds?